



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 3

[IB Docket No. 98-96; FCC 18-186]

1998 Biennial Regulatory Review -- Withdrawal of the Commission as an Accounting Authority in the Maritime Mobile and Maritime Mobile-Satellite Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (“Commission” or “FCC”) instructs Commission staff to, within 120 days, consult with Federal stakeholders, including the United States Coast Guard (Coast Guard), and to work with service providers to finalize and announce a plan to transition the functions and duties performed by the Commission as an accounting authority for those customers in the maritime mobile and maritime mobile-satellite radio services that have not otherwise designated any such accounting authority. In the Second Report and Order, the Commission provides a substantial transition period of up to one year following announcement of the transition plan to ensure an orderly transfer of the Commission’s accounting authority duties to private authorities.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dana Shaffer, Deputy Bureau Chief and Chief of Staff, Wireless Telecommunications Bureau, (202) 418-0832, email Dana.Shaffer@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Second Report and Order, IB Docket No. 98-96; FCC 18-186, adopted December 18, 2018 and released December 21, 2018. The full

text of this document is available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, DC 20554. Copies may be obtained via the Commission's Electronic Comment Filing System by entering the IB docket number 98-96 and is available on the FCC's website at <http://www.fcc.gov>.

Synopsis

I. SECOND REPORT AND ORDER

1. In the Second Report and Order, the Commission adopts a proposal to transition the functions and duties performed by the FCC as an accounting authority. The Commission refers to this default function as the accounting authority of last resort, and it finds that the public interest would be better served by relying upon private accounting authorities to perform the accounting authority of last resort function. The Commission notes that such private authorities are certified under part 3 of the Commission's rules and operate under the Commission's regulatory oversight.

2. The Commission concludes that the record in the proceeding supports a renewed decision to withdraw as the accounting authority of last resort and to provide users with a definitive timeframe within which to transition to a new accounting authority of their choosing. All commenters supported the Commission's proposal to withdraw completely as an accounting authority. The unanimous support is a change from 1999, and it reflects that, in 2018, not only are there sufficient private accounting authorities available to settle accounts, but there also has been a significant reduction in reliance on the FCC as an accounting authority. Given this reduction in reliance on the FCC and the reduced volume of customers who may be affected when the Commission withdraws as accounting authority, as well as the presence of a functioning market for this service that will mitigate the adverse impact of the FCC's withdrawal, the Commission finds that the best alternative is for its withdrawal as an accounting authority. The Commission continues to believe that it remains the basic

responsibility of the user, whether a private or governmental entity, to designate an accounting authority to handle its calls.

3. The Commission is not persuaded that it should name COMSAT as the default accounting authority of last resort. No party other than COMSAT urged the FCC to take such a step; in fact, other commenters, notably the Coast Guard, supported the Commission's proposal to require users to select a new accounting authority, provided the Commission ensures users are given adequate notice and time to put in place arrangements with another accounting authority. The Commission finds no record support from users for a wholesale transfer of the settlement of the accounts of terminal holders currently subscribed to US01 to COMSAT or any other private accounting authority. Moreover, Inmarsat adamantly opposes designation of a default accounting authority of last resort. Given both the lack of record support for developing a formula to spread undesignated messages among several private accounting authorities, and the lack of accounting authorities coming forward on the record to offer to settle accounts for affected users, the Commission finds no basis for exploring the option further. The Commission notes, moreover, that one option it considered -- to allow customers to designate an accounting authority on every message in lieu of pre-subscribing to an accounting authority -- is not technically feasible, because the accounting authority is selected by the user when the device is activated for service in the first instance, not prior to each call. The Commission also states that Inmarsat is the underlying service provider for the majority of non-governmental entities who will be impacted by the FCC's withdrawal. Reassigning all users to COMSAT as accounting authority was not one of the proposals on which the Commission sought comments, and the Commission finds no record support from any users for a wholesale transfer of the settlement of their accounts to COMSAT or any other private accounting authority.

4. The Commission is not persuaded that there is a compelling need to engage in either a comparative selection or procurement process to select a new accounting authority of last resort. Given the small number of current users of the FCC's accounting authority, the availability of numerous private

accounting authorities from which to choose, and the fact that no new terminals have been activated with the FCC as accounting authority in the past five years, the Commission finds there is no compelling need to designate a new accounting authority of last resort. Moreover, there is little benefit in procuring an alternative accounting authority for the few remaining terminal holders using the FCC as their accounting authority that would outweigh the administrative burden and cost of conducting further proceedings to determine how best to select an accounting authority of last resort, conducting such selection or procurement process, and then continuing to manage whichever vendor is chosen. For the same reasons the Commission has decided to withdraw as an accounting authority, it finds that it should not then “re-enter” by selecting or contracting with a private entity to take the FCC’s place, when there are private accounting authorities—competitive alternatives—from which terminal holders may choose their preferred accounting authority. Instead, based on the record in the proceeding, the Commission finds that the more reasonable approach is to provide ample notice and time to allow users to select their preferred accounting authority. The Commission finds that this will ensure the continuity of lifesaving maritime communications services.

5. Commenters generally have noted that one year is the minimum amount of time that would be required for the Commission to conduct outreach and for terminal holders that currently use the Commission as their accounting authority to migrate their terminals to a new accounting authority of their choice. Given the long pendency of the proceeding and the Commission’s repeated proposal, from 1998 to 2018, to withdraw as an accounting authority, the vast majority of users already have effectuated such transition. The Commission notes that, for governmental users with large accounts and multiple terminals, such transition efforts have been ongoing for some time, even in the absence of a specific transition plan or definitive timing; the Commission finds that one year is sufficient notice to such users of the need to complete the transition of their terminals to a new accounting authority, and one year is ample notice to private users of single terminals of the need to select a new accounting authority.

6. The Commission directs its staff to, within 120 days of the release of the Second Report and Order, finalize and announce a transition and outreach plan of no more than one year from the date of announcement, which the Commission finds is sufficient time for affected users to contract with an accounting authority of their choice and to perform the necessary recommissioning of their terminals. The broad outlines of the transition plan shall be as follows: The Commission will continue to act as the accounting authority for terminals currently subscribed to US01 for one year after the plan is announced. After that one-year period, the Commission will stop performing the functions of an accounting authority and will formally withdraw as an accounting authority; AAIC US01 will be deactivated. At any time before the end of the transition period, but no later than the last day of the transition period, users that have relied on the Commission as an accounting authority will need to affirmatively select an accounting authority, contract with such entity as their new accounting authority, and reactivate/recommission their terminal(s) with the AAIC of their selected accounting authority. A failure to do so could render such users unable to transmit maritime communications other than distress signals.

7. Commission staff will work with stakeholders to effectuate the transition and facilitate the selection of new accounting authorities for terminals currently subscribed to US01. Given the Coast Guard's concern regarding Inmarsat-C terminal holders, the Commission also directs staff to work with Inmarsat to notify all Inmarsat-C terminal holders of the need to select a new accounting authority. The Commission further directs staff, when formulating the transition plan, to take into account the safety concerns of the Coast Guard, and to coordinate with the Coast Guard to ensure that the message to potentially affected users is clear and disseminated in multiple ways to reach, to the extent feasible, all affected terminal users. The outreach plan shall include, at a minimum, direct notification to every terminal holder, governmental and non-governmental, that has used the FCC as an accounting authority since January 1, 2016. The Commission states that because this would capture the past three years of terminal use/activity from terminals that have the FCC as their designated accounting authority, this

should be an adequate length of time to form a representative picture of which terminal holders continue to rely on the Commission as their accounting authority. Moreover, since any terminals not in use in the past three years are more likely to be those of infrequent personal users, the outreach that the Commission requires as part of the transition plan will also notify all Inmarsat-C terminal holders via messaging over the terminal itself, regardless of whether the FCC has received billing for such terminal in the past three years. The Commission's outreach plan shall also include one or more enhanced group call messages to Inmarsat-C terminal holders notifying them of the requirement to select a new accounting authority; any other feasible direct notification to all Inmarsat-C terminal holders in a manner developed collaboratively with Inmarsat and the Coast Guard; and broad outreach via public notices and other means to provide clear notice to all potentially affected users.

8. Beyond commenting on the withdrawal of the FCC as accounting authority and the associated transition, the Coast Guard asks that the FCC set forth precise procedures for mariners to file complaints with the FCC should they encounter discriminatory treatment or unreasonably high rates from an accounting authority. The Commission notes, however, that procedures already exist for the filing of complaints regarding any violation of the Commission's rules and/or for a determination of whether a practice comports with the Commission's rules, so no new procedures need be put in place. Specifically, 47 CFR 3.10(e) states, "Applicants [accounting authorities] must offer their services to any member of the public making a reasonable request therefor, without undue discrimination against any customer or class of customer," and must charge "reasonable and non-discriminatory" fees for service. In addition, the Commission believes 47 CFR 3.52 adequately addresses procedures for resolving complaints and inquiries regarding accounting authorities. The Commission does, however, direct the staff, as part of its outreach efforts, to coordinate with the Coast Guard and provide guidance to terminal holders regarding how to file complaints and where to go for more information on Commission complaint procedures.

9. Finally, the Commission finds that the code US01 should, after deactivation, be retained by the Commission and not reassigned except upon review and approval by the Commission. This will allow for the potential assignment of the code to another governmental agency, should such need arise, and will prevent the code from being reassigned for use without the full knowledge of the Commission. Given the historic use of this code by various governmental users and potentially sensitive information associated with such governmental users, the Commission finds that this code should not be made available for reassignment to private accounting authorities. The Commission finds that protection of the US01 accounting code will reduce confusion and prevent the inadvertent provision of confidential or sensitive information without the knowledge or consent of terminal holders; therefore, it finds continued reservation of this code is in the public interest. The Commission instructs staff to take appropriate steps to ensure these protections are put in place.

II. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared and properly published an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the proposed policies and rules proposed. No written comments were received on the IRFA. Thus, the Commission prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules.

1. Need for, and Objectives of, the Rules

11. In the Second Report and Order, the Commission concludes that it will withdraw as an accounting authority in the maritime mobile and maritime mobile-satellite radio services. The Commission concludes that a 120-day period is appropriate to permit the preparation of a transition plan in coordination with the United States Coast Guard and industry, and a one-year transition period to implement that plan is sufficient to ensure a smooth, non-disruptive transition to private accounting authorities.

2. Legal Basis

12. The Second Report and Order is adopted pursuant to sections 4(i), 4(j), 11, 201-205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 161, 201-205 and 303(r).

3. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

13. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

14. The Chief Counsel did not file any comments in response to the proposed rules in the proceeding.

4. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

15. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules and policies. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

16. The action taken in the Second Report and Order will transition the Commission’s accounting authority to one or more entities providing account-settlement services for maritime mobile and maritime mobile-satellite radio services. Small businesses may be able to become accounting clearinghouses, as the establishment of such a function does not appear to involve high implementation

costs. The transition also applies to existing maritime mobile and maritime satellite customers who have not presubscribed to a private U.S. accounting authority and are, therefore, billed through the FCC as the accounting authority of last resort. An estimated thirty small entities were billed for traffic by the FCC as an accounting authority in 2016. The transition to a new accounting authority does not appear to involve high implementation costs for such entities.

5. Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

17. The action taken in the Second Report and Order will not affect the existing reporting, recordkeeping, or other compliance requirements of those entities already certified and those applying for certification as a private accounting authority pursuant to Part 3 of the Commission's rules.

6. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

18. The Commission is transitioning its functions and duties as an accounting authority to private accounting authorities. There is minimal impact on small entities, and affected small entities will be given ample time to effectuate the transition for any terminal for which they had prescribed the Commission as the accounting authority. No alternatives have been identified that would lessen the economic impact on small entities while remaining consistent with the objectives of the proceeding. Moreover, the Commission will conduct, in coordination with the United States Coast Guard and other stakeholders, as appropriate, extensive outreach to inform and minimize impact on all affected entities, including small entities.

B. Paperwork Reduction Analysis

19. The Second Report and Order does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, it does not contain any new or modified information collection burden for small business

concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

C. Congressional Review Act

20. The Commission will send a copy of the Second Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA).

III. ORDERING CLAUSES

21. IT IS ORDERED that pursuant to sections 4(i), 4(j), 11, 201-205 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 161, 201-205 and 303(r), the Second Report and Order IS ADOPTED.

22. IT IS FURTHER ORDERED that the actions taken in the Second Report and Order WILL BECOME EFFECTIVE [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

23. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Second Report and Order, including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

24. IT IS FURTHER ORDERED that the Second Report and Order SHALL BE sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary

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